

#### **§ 958.4**

any defense on which the respondent intends to rely.

#### **§ 958.4 Referral of complaint.**

(a) If the respondent fails to request a hearing within the specified period, the Determining Official shall transmit the Complaint to the Judicial Officer for referral to a Presiding Officer, who shall issue an Initial Decision based upon the information contained in the Complaint.

(b) If the respondent files a Hearing Petition, the Determining Official, upon receiving a copy of the Petition, shall promptly transmit to the Presiding Officer a copy of the Postal Service's Complaint.

#### **§ 958.5 Scope of hearing; evidentiary standard.**

(a) A hearing under this part shall be conducted by the Presiding Officer on the record:

(1) To determine whether the respondent is liable under 39 U.S.C. 3018, and

(2) If so, to determine the amount of any civil penalties, clean-up costs and/or damages to be imposed.

(b) The Postal Service must prove its case against a respondent by a preponderance of the evidence.

(c) The parties may offer for insertion onto the record such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the Presiding Officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

#### **§ 958.6 Notice of docketing and hearing.**

(a) Within a reasonable time after receiving the respondent's Hearing Petition and the Complaint, the Presiding Officer shall serve upon the respondent

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and the Determining Official, a Notice of Docketing and Hearing.

(b) The Notice of Docketing and Hearing required by paragraph (a) of this section may include:

(1) The tentative site, date, and time of the oral hearing, if one is requested;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The nature of the hearing;

(4) The matters of fact and law to be decided;

(5) A description of the procedures governing the conduct of the hearing; and

(6) Such other information as the Presiding Officer deems appropriate.

#### **§ 958.7 Hearing location.**

An oral hearing under this part shall be held:

(a) In the judicial district of the United States in which the respondent resides or transacts business;

(b) In the judicial district of the United States in which the incident or incidents occurred upon which the determination of liability under 39 U.S.C. 3018 was made by the Determining Official; or

(c) In such other place as may be determined by the Presiding Officer.

#### **§ 958.8 Rights of parties.**

Subject to the sound discretion of the Presiding Officer, acting under § 958.9, parties to a hearing under this part shall have the right:

(a) To be accompanied, represented, and advised, by an attorney or representative of his or her own choosing;

(b) To participate in any conferences held by the Presiding Officer;

(c) To agree to stipulations of fact or law, which shall be made part of the record;

(d) To make opening and closing statements at the oral hearing;

(e) To present oral and documentary evidence relevant to the issues;

(f) To submit rebuttal evidence;

(g) To conduct such cross-examination as may be required for a full and true disclosure of the facts; and

(h) To submit written briefs, proposed findings of fact, and proposed conclusions of law.